

# **Exhibit A**

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

SCANSOFT, INC.,	)	
	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 04-10353-PBS
	)	
VOICE SIGNAL TECHNOLOGIES, INC.,	)	
LAURENCE S. GILLICK, ROBERT S. ROTH,	)	
JONATHAN P. YAMRON, and MANFRED G.	)	
GRABHERR,	)	
	)	
Defendants.	)	

**VOICE SIGNAL TECHNOLOGIES, INC.'S  
SECOND SET OF INTERROGATORIES TO PLAINTIFF**

Pursuant to Federal Rule of Civil Procedure 33 and the Local Rules of the District of Massachusetts, defendant and counter-claim plaintiff Voice Signal Technologies, Inc. ("VST") requests that plaintiff and counter-claim defendant ScanSoft, Inc. ("ScanSoft") answer within thirty (30) days of service the following Interrogatories.

**DEFINITIONS**

As used herein, the following terms shall have the meanings set forth below.

1. "And" as well as "or" shall be construed both disjunctively and conjunctively, as necessary, to bring within the scope of the Interrogatories all responses that might otherwise be construed to be outside their scope, and to give each Interrogatory its broadest possible meaning.
2. "Any" shall be construed also to mean "all," and "all" shall be construed also to mean "any."
3. "Concerning" means regarding, mentioning, referring to, relating to, describing, memorializing, evidencing, commenting on, constituting or containing.

4. “Document,” in the plural as well as in the singular, shall be construed in the broadest sense permissible under Federal Rule of Civil Procedure 34, and means all originals, copies and drafts of any writing or other tangible or intangible thing from which data or information can be obtained, known to you or within your possession, custody or control, including, but not limited to, all written, printed, typed, transcribed, electronically encoded matter, any sound or video recording, any photograph or graphic matter or any other thing containing information or communications or from which information or communications may be derived.

5. “Identify” when used with respect to a document, as defined herein, means to state the type of document, the general subject matter of the document, the date of the document, and the author, addressee, recipient and current custodian and location of the document.

6. “Identify” when used with respect to a person, as defined herein, means to state the person’s full name, present or last known address, and, when referring to a natural person, the present or last known place of employment.

7. “ScanSoft,” “you,” and “your” shall mean ScanSoft, Inc. and any and all of its predecessors, successors, parents, subsidiaries, divisions, affiliates, employees, officers, directors, agents, attorneys, representatives, or other persons or entities who have acted or purported to act for or on behalf of any of them.

8. “VST” shall mean Voice Signal Technologies, Inc. and any and all of its predecessors, successors, parents, subsidiaries, affiliates, servants, employees, officers, directors, agents, attorneys, representatives, or other persons or entities who have acted or purported to act for or on behalf of any of them.

### INSTRUCTIONS

1. In answering the following Interrogatories, furnish all available information, including information in the possession, custody, or control of any of your attorneys, directors, officers, agents, employees, representatives, associates, investigators, divisions, affiliates, partnerships, parents, subsidiaries, and persons under your control. If you cannot fully respond to any Interrogatory after exercising due diligence to secure the information requested thereby, so state, and specify the portion of the Interrogatory that cannot be responded to fully and completely. In the latter event, state what efforts were made to obtain the requested information and the facts relied upon that support the contention that the Interrogatory cannot be answered fully and completely, and state what knowledge, information or belief you have concerning the unanswered portion of the Interrogatory.

2. If any information requested is claimed to be privileged, please provide all information falling within the scope of the Interrogatory that is not privileged, and for each item of information contained in a document to which a claim of privilege is made, identify such document with sufficient particularity for purposes of a motion to compel.

3. If your response to any Interrogatory is a statement that you lack the ability to comply with the Interrogatory, specify whether the inability to comply is because the particular item or category of information never existed, has been destroyed, has been lost, misplaced, or stolen, or has never been or is no longer in your possession, custody, or control, in which case identify the name and address of any person or entity known or believed by you to have possession, custody, or control of that information or category of information.

4. If, in answering any Interrogatory, you claim there is any ambiguity in the Interrogatory or an applicable definition or instruction, you shall not use such claim as a basis for

refusing to respond, but shall state in your response the language you deem ambiguous and the interpretation used in responding to the Interrogatory.

5. Your obligation to respond to these Interrogatories is continuing and your responses must be supplemented to include subsequently acquired information.

### **INTERROGATORIES**

#### **Interrogatory No. 1:**

Identify with particularity each trade secret that ScanSoft alleges defendants Laurence S. Gillick, Robert S. Roth, Jonathan P. Yamron, and Manfred G. Grabherr used and disclosed for the benefit of VST. For each such trade secret, state the subject matter, content, function, method of operation, creator(s), and date of conception of the trade secret, and identify all documents that describe, embody, constitute, or contain the trade secret.

#### **Interrogatory No 2:**

Excluding the trade secret(s) identified in response to Interrogatory No. 1, identify with particularity any confidential and proprietary information that ScanSoft alleges defendants Laurence S. Gillick, Robert S. Roth, Jonathan P. Yamron, and Manfred G. Grabherr used and disclosed for the benefit of VST. For any item of confidential and proprietary information identified, state the subject matter, content, function, method of operation, creator(s), and date of conception of the confidential and proprietary information, and identify all documents that describe, embody, constitute, or contain the confidential and proprietary information.

#### **Interrogatory No. 3:**

Identify each ScanSoft product that implements, embodies, contains, or employs the trade secret(s) or confidential and proprietary information identified in response to Interrogatory Nos. 1 and 2, or, if no such products exist, state how ScanSoft uses the trade secret(s) and confidential and proprietary information.

Interrogatory No. 4:

Identify the steps taken by Lernout & Hauspie Speech Products N.V. to protect from disclosure the trade secret(s) and confidential and proprietary information identified in response to Interrogatory Nos. 1 and 2.

VOICE SIGNAL TECHNOLOGIES, INC.

By its attorneys,



Robert S. Frank, Jr. (BBO No. 177240)

Sarah Chapin Columbia (BBO No. 550155)

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CHOATE, HALL & STEWART

Exchange Place, 53 State Street

Boston, MA 02109

(617) 248-5000

Dated: January 28, 2005

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I HEREBY CERTIFY THAT A TRUE COPY OF  
THE ABOVE DOCUMENT WAS SERVED  
UPON THE ATTORNEY OF RECORD FOR  
EACH OTHER PARTY BY MAIL/HAND ON

DATE 1/28/05 SIGNATURE Paul Popeo

# **Exhibit B**

COPY

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

SCANSOFT, INC., )

Plaintiff )

-VS- )

VOICE SIGNAL TECHNOLOGIES, INC., )

LAURENCE S. GILLICK, ROBERT S. ROTH, )

JONATHAN P. YAMRON, and )

MANFRED G. GRABHERR, )

Defendants )

CA No. 04-10353-PBS

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MARKMAN HEARING

BEFORE THE HONORABLE PATTI B. SARIS  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

LEE C. BROMBERG, ESQ., ERIK PAUL BELT, ESQ.,  
and LISA M. FLEMING, ESQ., Bromberg & Sunstein,  
125 Summer Street, Boston, Massachusetts, 02110-1618,  
for the Plaintiff.

ROBERT S. FRANK, JR., ESQ., PAUL D. POPEO, ESQ.,  
and SARAH CHAPIN COLUMBIA, ESQ., Choate, Hall & Stewart,  
53 State Street, Boston, Massachusetts, 02109,  
for the Defendants.

United States District Court  
1 Courthouse Way, Courtroom 19  
Boston, Massachusetts  
June 17, 2005, 2:10 p.m.

LEE A. MARZILLI  
CERTIFIED REALTIME REPORTER  
United States District Court  
1 Courthouse Way, Room 3205  
Boston, MA 02210  
(617) 345-6787



1 patent.

2           Now, the third issue which is key to me that I'd  
3 like to sort of work through is this trade secrets issue  
4 because now I have a better familiarity with the case. And I  
5 was sort of thinking -- can I just throw this out so you  
6 don't all have heart failure at the end. I can't read those  
7 documents. I mean, that would be crazy for me to do  
8 something in camera. I started skimming through them. I had  
9 no idea what they were talking about. We have two experts in  
10 this room who are independently hired experts. Why don't I  
11 disclose the documents to them, and counsel can consult with  
12 the expert on what they mean and whether they support your  
13 claim. And when similarly other documents are turned over  
14 that ScanSoft must turn over under your claims for  
15 infringement, et cetera, your expert will look at them. And  
16 that way it's not an in-house person, it's not a competitive  
17 situation, and I'd have sort of signed waivers. I don't know  
18 that your experts would be willing to do it, or maybe there's  
19 some palpable conflict that I'm not familiar with, but that  
20 struck me as a good way out. And I noticed some courts were  
21 doing that, which is getting an outside expert. And since we  
22 have two people sitting right here, I thought maybe during  
23 the break you could ask whether there would be any conflict  
24 that would preclude it.

25           MR. BROMBERG: That's acceptable to us, your

1 Honor. I think that would work well.

2 MR. FRANK: It's not acceptable to us, your Honor,  
3 and I can explain why if you want.

4 THE COURT: You know what, you're going to have to  
5 come up with something because I can't read those documents.  
6 It's clear I wouldn't create any harm in it because I can't  
7 even understand them.

8 MR. FRANK: Our proposal is that we get together  
9 and agree on a genuinely neutral expert to look at them.

10 THE COURT: Well, maybe the two experts today can  
11 get together today and agree on a third one.

12 MR. FRANK: And that would be an acceptable way,  
13 your Honor.

14 THE COURT: That would be acceptable to me too, but  
15 we've got to break this logjam, and I can't look at those  
16 documents in camera, and we've to get them the documents.  
17 And so it should be an independent expert who's able to look  
18 at them in conjunction with counsel because they've got to  
19 make an assessment about whether it does or does not support  
20 their claim. Now, they can each be each respective's  
21 experts, or it can be someone that they both can go outside  
22 now and figure out who they both agree is an expert, but it's  
23 got to be somebody who can talk with counsel, explain what  
24 they mean to him, because I'm assuming Mr. Bromberg, as smart  
25 as he is, probably won't understand what half this means

1 either. He needs to be able to have someone interpret them.

2 MR. BROMBERG: You're absolutely right, your Honor.

3 MR. FRANK: If I may, your Honor.

4 THE COURT: Yes.

5 MR. FRANK: What we would propose is that it's fine  
6 with us if the two experts get together and select a neutral  
7 expert so that there's as little partisanship in that as  
8 possible. The second thing that we would be prepared to do  
9 is to have the plaintiffs provide whatever code they think  
10 was copied, may have been copied by our side. And the expert  
11 can look at the code that we have produced, and if that  
12 expert finds in there the, you know, copying or the use of  
13 the core idea and thinks it's genuinely a secret -- that is,  
14 that the idea in question is not generally known -- that  
15 seems to us to be a fair way to go forward. We're concerned  
16 about the misuse of this material, and we believe that  
17 there's substantial --

18 THE COURT: I understand. This is what I'm going  
19 to do. I think, if there's a concern about the partisan  
20 experts, pick a third name. Have the person --  
21 Mr. Bromberg's firm will have to explain what the theory of  
22 the trade secrets are to him so that he'll know or she will  
23 know what to look for, and then at some point you can either  
24 sit down in a mutual meeting where the expert explains what  
25 he has or has not found with all of you sitting there. We

1 can do it by means of deposition, and you'll both pay the  
2 person.

3 MR. FRANK: Fine.

4 MR. BROMBERG: Your Honor, we --

5 THE COURT: And the counsel will be there, and  
6 counsel will be able to talk to this expert, and this expert  
7 will walk through those documents, because I can't do it.  
8 And so maybe by within a week someone can come up with  
9 another name, and we'll just see if the person is willing to  
10 do it. Whatever the big bucks are, you'll divvy them up  
11 between everybody, and we'll just get this off the dime.

12 MR. BROMBERG: Your Honor, my only concern is that  
13 we already have retained an expert, and actually we have a  
14 different expert who is also here, Mr. Goldhor, for the --  
15 you know, he's an expert in speech recognition software,  
16 so --

17 THE COURT: Maybe he'll be mutually agreeable, but  
18 if he isn't mutually agreeable, then there have got to be  
19 other people out there that both can walk through it and  
20 decide. And exactly the same person will be used for  
21 whatever documents that you provide to them, and that way the  
22 person is hopefully going to be neutral, you know, with  
23 respect to stock interests and consulting agreements,  
24 et cetera, with respect to both sides, and he'll be our  
25 court-appointed expert to walk through the trade secret and

1 source code kinds of issues.

2 MR. FRANK: That's fine with us.

3 THE COURT: Okay? And you'll work out a procedure;  
4 you know, what's sauce for the goose is sauce for the gander;  
5 and whichever side works for one will work for the other,  
6 because you've got certain requests too, right?

7 MR. FRANK: We have been trying to get from them  
8 the code that underlies their accused product for six months.

9 THE COURT: Because you want to know if there's an  
10 infringement.

11 MR. FRANK: Because we want to know if there is an  
12 infringement.

13 THE COURT: Fine. This is exactly the kind of  
14 thing we'll have this neutral person do. It will not be  
15 discloseable to anyone in the firms, and it will create or  
16 destroy a good-faith belief on both sides' parts with respect  
17 to either trade secret or infringement. So that's why  
18 there's an incentive on both sides to come up with an expert  
19 you can agree on and a procedure you can agree on because  
20 it's going to affect both sides.

21 MR. BROMBERG: Okay, your Honor, with respect to  
22 the -- well, we'll see what we can do by way of agreement.

23 THE COURT: Right. I don't want to take too much  
24 time because we have so much to do today, but it's been  
25 worrying me ever since I got the pile that that wasn't

1 realistic for me to be doing it, and it was holding the  
2 litigation at a standstill. And I also noticed the footnote  
3 in the Markman hearing that you're going to have a similar  
4 problem. So since you're head-on-head competitors, that's  
5 the best I can do.

6 MR. FRANK: Let me just say this. We have since  
7 the beginning of this case asked the other side to identify  
8 what trade secrets they --

9 THE COURT: You know what, I'm past the issue. I'm  
10 past it, all right? I'm going on. I need to cut the -- and  
11 I cannot look at those documents. So that's what we're going  
12 to do. They'll disclose the source code that they think has  
13 been copied to the independent expert. The independent  
14 expert will go through and see whether there are any trade  
15 secrets that are reflected that would show that, and then  
16 provide either a good-faith belief or a nongood-faith belief  
17 on behalf of Mr. Bromberg that there have been some theft of  
18 trade secrets.

19 And similarly on the infringement issue, you'll  
20 tell him the source code. And, of course, the two of you  
21 will have it, but I'm assuming it's meaningless giving that  
22 to you, to the two firms. And you'll say the source code  
23 that you think has been infringed, and the expert will have  
24 to figure out from your source code whether there's an  
25 infringement or not. And then we'll get a neutral,

1 independent report that will be in camera and secret, and  
2 we'll see where to go from there. I don't know how else to  
3 do this. And we'll divvy up the payments 50/50. And  
4 hopefully you'll come up with someone who's, you know, as  
5 knowledgeable as the experts in this case obviously are.

6 All right, so now let's start with your Markman  
7 issue.

8 MR. BROMBERG: Okay, your Honor, in connection with  
9 the Markman hearing, we have prepared a booklet of exhibits,  
10 and so I'd like to hand that up to you now. I have two  
11 copies for the Court. And apropos with your question about  
12 what's really in dispute here, the first two tabs, Tab 1 is  
13 the three issues on the '966, and Tab 2 is what we thought  
14 were the five issues on the '630, and hopefully that  
15 simplifies and focuses it better.

16 THE COURT: So this is what I'm hoping to do. I'm  
17 going to give you a half an hour on your issues. That's it.  
18 I've read it.

19 MR. BROMBERG: Okay.

20 THE COURT: I'm going to give you a half an hour on  
21 your construction of your three claims under '966 and a half  
22 an hour to respond, and then we're going to take a break for  
23 the Court Reporter because this is thick going. And then  
24 we're going to do hopefully, you know, maybe a half an hour  
25 on the three to five issues and then a half-an-hour response.

1 covers, we're not so sure here, even if you took every single  
2 one of -- do you know for a fact that if we gave you every  
3 single one of your definitions as you want them, do you know  
4 of a product that infringes?

5 MS. COLUMBIA: We have accused specific products of  
6 infringement. Because our patent goes to the guts of how the  
7 voice recognizer works, we can't know until they produce  
8 their source code.

9 THE COURT: So that's what we need to know, we need  
10 to tell that expert to look at under your definitions.

11 MS. COLUMBIA: Yes, your Honor.

12 THE COURT: And then also under their definitions,  
13 and we'll see what's a fair debate. Does that make some  
14 sense?

15 MS. COLUMBIA: We have no objection to proceeding  
16 that way, your Honor.

17 THE COURT: Does that make some sense?

18 MR. BROMBERG: Well, your Honor, let me say two  
19 things. We don't object to deferring these issues until we  
20 see if there is anything to them, but we do object to the  
21 proposition that a neutral, independent expert can be the  
22 decision-maker about any of these things.

23 THE COURT: Sure, but they're going to at least get  
24 me through this impasse on who sees what. I'll at least have  
25 some neutral person look at it and say under their -- we



1     could even call the person a court-appointed expert if you're  
2     all more comfortable with me doing it that way, both for  
3     purposes of discovery and for purposes of possible  
4     infringement. And then eventually I will give that --  
5     obviously the lawyers will have the report, but we'll have to  
6     have it in a format so the experts can look at it too, but at  
7     least I'll know something is there from both ends. I mean,  
8     it can be secret with me. I won't understand what they're  
9     saying anyway. Besides, you've both talked me into believing  
10    this rug is blue, so. . .

11                 So let's do this. It's late on a Friday. It's  
12    been well briefed. I'm very thankful that a number of things  
13    have been honed in. I'm going to be here next week, the end  
14    of next week, but then I'm on vacation the last week in June,  
15    and then I'm back for most of July and August. So when do  
16    you think you could come up with and find a neutral expert by  
17    using both of your experts? Do you think we could do this by  
18    the second week in August?

19                 MR. FRANK: Your Honor, let me say --

20                 THE COURT: Excuse me. The second week in July?

21                 MR. BROMBERG: Yes, your Honor.

22                 MR. FRANK: Why don't you turn us loose for some  
23    defined period of time and see if we can agree.

24                 THE COURT: July 15 come up and find an expert who  
25    can give us the time fairly rapidly?

1 MR. FRANK: Yes, and I would add one more thing.  
2 If we are unable to agree, then we should each nominate  
3 someone, and your Honor can pick him out of a hat.

4 THE COURT: Fair enough. That's fine, okay. And  
5 then whoever that is, I'll designate an independent expert,  
6 who will give me a first cut-through on trade secrets as well  
7 as infringement. And it obviously is not the final say. I  
8 don't think I get off that easy.

9 Is it possible that the answers that are provided  
10 to facilitate a settlement -- I'm going to be working on, by  
11 the way, the ScanSoft patent in any event. That I'm not  
12 putting off. But it could help work through some of these  
13 issues in a way that could help you enter into settlement  
14 discussions.

15 I guess I'm putting this inartfully. The question  
16 I have is: I'm going to be working on an opinion on the  
17 ScanSoft, but if you've got some opinions from this  
18 independent person that could help bring the parties  
19 together, I wouldn't want for me to issue an opinion that  
20 upset the apple cart one way or another.

21 MR. FRANK: Your Honor, we have deposition  
22 testimony that says that they have no idea whether we used  
23 any trade secrets of theirs or not. We can present that to  
24 you. They're not interested in that. This case is about --  
25 has little to do with the legal merits.

1 THE COURT: Put the trade secrets aside for a  
2 minute. I'm talking about some sort of cross-licensing or  
3 something like that.

4 MR. FRANK: We're all ears. This case is motivated  
5 by something other than the merits of the case, and therefore  
6 I think it's very unlikely that it's going to settle.

7 THE COURT: Well, that may be. I'm simply saying,  
8 whatever this independent expert says may support or defeat  
9 that theory.

10 MR. FRANK: I predict that if your Honor were to  
11 rule that there was nothing to any of this stuff, they'd sue  
12 us for something else because their objective has to do with  
13 continually suing us.

14 THE COURT: Yes, but assume for a minute that the  
15 independent expert says, "There's no trade secret here.  
16 They've told us about the source code. Don't worry about it,  
17 there's nothing here that's related to it," or contrarily  
18 that "Yes, there is," the question that I have is, would that  
19 move you closer to settlement?

20 MR. FRANK: Mr. Bromberg?

21 MR. BROMBERG: Well, you mean apart from the patent  
22 claim, your Honor?

23 THE COURT: No. Globally. I mean, why would you  
24 settle the trade secrets and not settle the -- I know that a  
25 couple of the other cases have settled, right? Or at least

1 one other one has, right?

2 MR. BROMBERG: Yes, one other one did settle, your  
3 Honor. The resolution of the trade secret claim in one  
4 direction or the other could spark settlement discussions. I  
5 believe your Honor's ruling on the '966 patent could have the  
6 same effect.

7 THE COURT: Well, I'm going to be chugging along,  
8 I'm not going to stop then, because that's very discrete and  
9 limited, and I can do something with it. I'm going to hold  
10 off on this to find out, once you've turned over all your  
11 source code to this independent expert, whether or not  
12 there's anything under their definitions that's going to be  
13 infringing and whether it's infringing under yours, and then  
14 I'll know if there's a real serious dispute here. And then  
15 we'll meet without the parties here with the independent  
16 expert and possibly with an expert from each side to argue  
17 the case, with clear protective orders against disclosing it  
18 to the competing parties. That's how I envision this  
19 happening.

20 So just let me know where you are on July 15. And  
21 I'm around, and you can run in sometime around then, and I  
22 will try and figure out a procedure if you don't agree,  
23 okay?

24 MR. FRANK: That's fine, your Honor.

25 MR. BROMBERG: Your Honor, just one more thing. I

1 think it goes with what you said, but we're out of time on  
2 our schedule. And I'm assuming that -- this is for  
3 discovery, et cetera -- I'm assuming that those dates are  
4 just pushed off while these issues get resolved?

5 THE COURT: You know, I'm always nervous about  
6 that. Should I just say pushed off three months? I mean, I  
7 just don't want to leave it open-ended.

8 MR. BROMBERG: That would be fine.

9 THE COURT: Or do you want to just sit and talk by  
10 the 15th and come up with an alternative schedule?

11 MR. FRANK: Let me make a distinction, your Honor.  
12 We are stuck on the trade secret side clearly on this  
13 question of who converted what.

14 THE COURT: Right.

15 MR. FRANK: On the other hand, with respect to the  
16 '966 patent, there has been a full opportunity for  
17 discovery, and we think we're at the deadline. We think that  
18 part should be over.

19 THE COURT: Both of those make sense.

20 MR. BROMBERG: No, that's wrong, your Honor.

21 THE COURT: You know, it's now five of 5:00, and  
22 obviously there's some disagreement, not surprisingly. So I  
23 think what needs to happen is, I think what we're better off  
24 doing is in a fresh way coming in, if Robert can find us a  
25 half an hour in July. I'll know where you are in finding an

1 expert. I'll know what our timetable is. If you'll both  
2 give me proposals as to how you think it should continue.  
3 Right now the deadlines are in place, so there's no more  
4 discovery unless I allow more discovery. And I may. I just  
5 don't know. That's obviously not going to be true of the  
6 trade secrets piece if I let it go forward, but under the  
7 '966 it may.

8 MR. BROMBERG: Well, your Honor, with due respect  
9 to the Court, the last time we were here you said you would  
10 not let the curtain come down on me being deprived of all  
11 discovery on the trade secret claims.

12 THE COURT: But it doesn't apply to trade secrets,  
13 I agree.

14 MR. BROMBERG: Okay, that's fine. On the patent  
15 side, your Honor, we have an order from Magistrate  
16 Judge Alexander that says, "Turn over your source code," turn  
17 over his source code to ScanSoft so ScanSoft can look at it  
18 and assess the infringement issue.

19 THE COURT: I just took care of that issue.

20 MR. BROMBERG: But we haven't had a chance to look  
21 at it yet, your Honor.

22 THE COURT: No, no, now you're not hearing me.  
23 That's why I'm setting up the independent expert is to deal  
24 with that.

25 MR. BROMBERG: I understand that, your Honor.

1 THE COURT: So right now all discovery is under the  
2 old deadlines until I get to impose new deadlines. And you  
3 obviously aren't agreeing, so I'm going to set up another  
4 status conference so you can give me your respective  
5 proposals and all of us aren't exhausted after a long week.  
6 So that's the best bet. I won't cut you off at the knees, I  
7 promise, particularly on trade secrets. I won't do that to  
8 you, but I just don't think I'm ready -- it's now five of  
9 5:00 -- to go head to head on a scheduling order, especially  
10 since it will be so much more helpful when I have an expert  
11 in mind, I have a timetable in mind, I'll know what to think  
12 about it. So in July, like around the 15th, 16th, the next  
13 week, the 20th, somewhere in there?

14 THE CLERK: July 18 at 2:00 p.m.

15 THE COURT: All right, so it gives you basically a  
16 month to get an expert in line, give me alternative sets of  
17 proposals. We'll be working on this, and hopefully we'll be  
18 done with it by the end of the summer and so I don't start a  
19 new clerk on it, but if not, it will create some delay.

20 MR. BROMBERG: Your Honor, we do have some  
21 depositions scheduled right now. Are you saying that we  
22 should not do them or just go ahead and --

23 THE COURT: That's fine. If they have been  
24 prescheduled, do them.

25 Anybody want the Miriam Webster definition of

# **Exhibit C**



UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

-----  
SCANSOFT, INCORPORATED, : Civil Action  
Plaintiff : No. 04-10353-PBS  
 :  
V. : Courtroom No. 19  
 : 1 Courthouse Way  
VOICE SIGNAL TECHNOLOGIES, INC.: Boston, MA 02210-3002  
ET AL, Defendant : 2:30 p.m., Monday  
-----  
July 18, 2005

Status Conference

Before: THE HONORABLE PATTI B. SARIS,  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

Bromberg & Sunstein, LLP,  
(by Lee Carl Bromberg, Esq. and Lisa M. Fleming, Esq.  
and Erik Paul Belt, Esq.)  
125 Summer Street, Boston, MA 02110-1618,  
on behalf of the Plaintiff.

Choate, Hall & Stewart,  
(by Robert S. Frank, Jr., Esq. and Sarah C.  
Columbia, Esq.),  
53 State Street, Exchange Place, Boston, MA 02109,  
on behalf of the Defendant.

Marie L. Cloonan  
Official Court Reporter  
1 Courthouse Way - Suite 5209  
Boston, MA 02210-3002 - (617)439-7086  
Mechanical Steno - Transcript by Computer

1 THE CLERK: The case of ScanSoft, Incorporated v.  
2 Voice Signal Technologies, Et Al, Civil Action No. 04-10353,  
3 will now be heard before this Court.

4 Will counsel please identify themselves for the  
5 record.

6 MR. BROMBERG: Lee Bromberg, Bromberg & Sunstein,  
7 for the plaintiff, ScanSoft, your Honor.

8 MR. BELT: Erik Belt, also Bromberg & Sunstein.

9 MS. FLEMING: Lisa Fleming, Bromberg & Sunstein,  
10 for the plaintiff.

11 MR. FRANK: Robert Frank and Sarah Columbia,  
12 Choate, Hall & Stewart, for the defendants.

13 THE COURT: Let me just say, I received today --  
14 more accurately -- read today the affidavit suggesting  
15 various experts for Voice Signal and expressing concern  
16 about ScanSoft's experts because of -- most from MIT and  
17 some of the research was funded through ScanSoft.

18 I was wondering if you had a response to any of his  
19 proposed independent experts, whether there were any laws or  
20 any conflicts, that you noticed.

21 MR. BROMBERG: Well, your Honor, we just got Mr.  
22 Frank's affidavit also at about 1:15. So, I had a chance to  
23 look at it quickly.

24 And, I think that the reason we selected the people  
25 from MIT, MIT is a world-renowned research institute, it's

1 cutting edge in this area. We knew that these people, being  
2 at that layout would have hands-on experience reading and  
3 writing source code. And, we think that they --

4 THE COURT: Normally I would say that was great,  
5 the fact that some other guy came out of there and into  
6 ScanSoft it didn't worry me as much as it did that -- that  
7 some of their research is funded by ScanSoft.

8 MR. BROMBERG: Well, they don't fund research, your  
9 Honor. They have, in the past, provided a stipulated grant  
10 and, in exchange for that, their technical people get to sit  
11 in at certain conferences.

12 THE COURT: It's too close.

13 MR. BROMBERG: Well, your Honor, the problem with  
14 the people that VST listed is that all of them appear to be  
15 senior figures in the speech recognition field. But, one we  
16 know for sure -- of course, we haven't contacted either our  
17 people or their people. We thought that there should be no  
18 contact until we jointly approach them.

19 But, all of their people, there's nothing in the  
20 public record that indicates that they have any hands-on  
21 experience with reading or writing code for the last 20  
22 years and things have changed a lot in that time.

23 THE COURT: You know, this should have all been  
24 talked about before I came here. This is most unfortunate  
25 that this is where we're at.

1 Do you know whether that's true?

2 MR. FRANK: Your Honor, it is my understanding that  
3 these people are among the best regarded people in the  
4 field. They are in academic institutions. I believe -- we  
5 certainly would -- we selected them believing that they  
6 could look at this code and know what was a trade secret and  
7 know what was garden variety stuff and recognize it and read  
8 it.

9 If it turns -- in order to do this, the expert  
10 would have to be able to read two different languages, in  
11 effect, C plus plus and C, because one of the parties is in  
12 one language and the other is in the other language.

13 We believe that they -- we wouldn't have picked  
14 them if we thought they couldn't do this job. We're not  
15 picking people who can't do the job.

16 THE COURT: Well, was there any conflict?

17 MR. BROMBERG: Well, your Honor --

18 THE COURT: That you know of?

19 MR. BROMBERG: Sorry?

20 THE COURT: That you know of.

21 MR. BROMBERG: Yeah. Well, with respect to their  
22 claim that Mr. Phillips knows all the MIT people, he knows  
23 all of these people at least as well. It's a small  
24 community and they all interact at conferences. And, one of  
25 the problems is that Jordan Cohen, the chief technology

1 officer at Voice Signal, is a very prominent figure in  
2 DARPA. In fact, he was hired by Dragon to secure grants  
3 from DARPA. And, that's exactly what he did.

4 THE COURT: I have no idea what DARPA is.

5 MR. BROMBERG: DARPA is the Defense -- a Defense  
6 Department Funded Research Agency that put a lot of money  
7 into speech recognition.

8 THE COURT: Why is that significant? Which expert  
9 does that knock out?

10 MR. BROMBERG: That's significant because a number  
11 of these experts have DARPA connections, your Honor.

12 THE COURT: Well, is there anybody there that you  
13 say doesn't have a connection out of his list?

14 MR. BROMBERG: Well --

15 THE COURT: I wasn't so keen on the guy from  
16 Germany simply because it was too far away and I thought he  
17 couldn't come in and testify easily. I was sort of thinking  
18 about Johns Hopkins because Baltimore seems pretty close,  
19 and closer than Berkeley. But, I don't have a strong  
20 feeling if there's a consensus on someone.

21 MR. BROMBERG: Right.

22 We don't think that the man from Johns Hopkins who  
23 is a senior guy, we don't think he could read code.

24 THE COURT: Tell me which of this group just seems  
25 like the best bet from your vantage?

1 MR. BROMBERG: From our vantage point, the one that  
2 might work is Phil Woodland. He's in Cambridge, in the UK,  
3 but he seems to be, from the information we can get without  
4 talking to him, he seems to be --

5 THE COURT: All right.

6 MR. BROMBERG: -- a possibility.

7 THE COURT: Has he agreed to do it? Have you  
8 talked to him?

9 MR. FRANK: No, no. We haven't, we have not.  
10 We've not approached any of these people. But, we'll go to  
11 Mr. Woodland. I mean, that's fine.

12 THE COURT: All right.

13 Why don't you try him. See if he's willing to do  
14 it.

15 MR. FRANK: Okay.

16 THE COURT: And, if not, I don't want to come back  
17 in here and have this -- you should be talking. Find out  
18 what this other -- make me a priority list. I think it is  
19 -- if, in fact, ScanSoft is funding research and meeting  
20 with folks in this position at MIT, it's too close for  
21 comfort.

22 There may be another organization -- you just named  
23 one -- where there may also be affiliations that are too  
24 close for comfort or it just may generally be something that  
25 people, you know, see each other at a conference once every

1 other year. I don't see that as too close for comfort. I  
2 mean, providing funding is a different order of magnitude.  
3 I don't think it matters that anyone was from -- that  
4 Phillips was originally from MIT. That would not have been  
5 enough for me.

6 MR. BROMBERG: Right. He's been out of there since  
7 '94, your Honor.

8 THE COURT: Right. That isn't enough.

9 The fact that they continue to fund the research  
10 and they meet at regular -- what did you say it was?

11 MR. BROMBERG: Conferences --

12 THE COURT: Conferences, regularly --

13 MR. BROMBERG: -- speeches.

14 THE COURT: -- is a little harder for me.

15 Now, I don't know what the degree of concern is  
16 about DARPA. All right. I don't know.

17 But, let's start with this guy from England, see if  
18 he's willing to do it, work down the list in terms of order  
19 of priority. My last priority, personally, is the guy from  
20 Germany. Woodland, ideally speaking, as a court-appointed  
21 expert, it will be easy to communicate with him, and that  
22 doesn't sound easy. It sounds as if there could be problems  
23 getting him here to testify. Although, I'm not sure it's  
24 any greater between England and Germany. But, maybe  
25 language barriers. I don't know.

1 But, if you want to go to him, go to him, if he's  
2 willing to commit to coming here and explaining this to me.

3 Now, I've got a very vigorous protest from ScanSoft  
4 that at some point, whoever this neutral arbiter is can't be  
5 the judge and jury about discovery. I think that's fair  
6 enough. But, it's got to be enough to explain to me why he  
7 -- since there are no shes -- why he believes that either  
8 there's a prima facie case of a trade secret violation or  
9 there isn't.

10 And, accordingly, if he thinks there's a prima  
11 facie case of a trade secret violation, we have discovery.  
12 If he thinks there isn't, at that point I'm going to have to  
13 hear about the appropriate procedure. Then, he'll have to  
14 explain why not in a way that you and your independent  
15 experts can look at it. Because, I -- and, then, I'll just  
16 have to make a decision --

17 MR. BROMBERG: Your Honor, we --

18 THE COURT: -- as to whether or not the discovery  
19 should go forward.

20 And, I think briefs should be filed under seal with  
21 him to explain what the basic contentions are or he won't  
22 understand it.

23 MR. BROMBERG: That's right. We agree with that,  
24 your Honor. And, we did file a proposed procedure. We  
25 just file that --



1 THE COURT: Ex parte. Because, otherwise, you get  
2 an access to what it is -- the basic thing that I'm saying  
3 you shouldn't get unless I have --

4 MR. FRANK: Your Honor, essentially what they're  
5 going to do is tell the expert what they think are the trade  
6 secrets we have taken. That's what they should legitimately  
7 be saying to the expert. There is no reason why they should  
8 not say that in a form that we can see it. And, no reason  
9 why we should not be able to respond.

10 THE COURT: I disagree with that. But, I do agree  
11 it should be on the record. It may well be that they say:  
12 Here's our source code. We think that they took these  
13 snippets of it. And, that's the kind of thing you should  
14 not have access to.

15 MR. FRANK: If I --

16 THE COURT: And, vice versa.

17 You know, I'm trying to -- this is what I'm going  
18 to do. No discussions with the expert, except on the  
19 record. It can be ex parte, if that's what the expert  
20 wants. If the expert prefers just written questions, so be  
21 it. But, every discussion should be on the record. And, if  
22 there's any challenge later on, it will be there, sealed, in  
23 my files.

24 I'm going to want to talk to him, just to explain  
25 it to me, whether there's a conclusion that -- and, there

1 does not have to be proof beyond a reasonable doubt, proof  
2 by clear and convincing evidence or even proof by a  
3 preponderance of the evidence. There just has to be a prima  
4 facie case on either of your claims, enough to trigger  
5 discovery. So, it isn't a huge burden on either side, but  
6 neither can it be a fishing expedition.

7 I think -- I sort of leave it up to this gentleman  
8 what procedure he'd find the most helpful.

9 But, at the end of the day, he's my independent  
10 expert, and I just need to have someone explain to me  
11 whichever conclusion he's written. And, I should write a  
12 little, you know, opinion, briefly, you know, either  
13 agreeing or not agreeing with what he's done.

14 And, I imagine each of your experts, one side or  
15 the other, may well disagree with it. And, I'll have to  
16 listen to what the disagreement is just so that it's fair.

17 Now, it turns into a procedural nightmare, simply  
18 because I understand it means turning over your most highly  
19 sought-after confidential information. It should be --  
20 aren't we doing it two ways? This is a two-edge sword, both  
21 sets of claims. So, one side might be happy and not the  
22 other side.

23 Now, once I agree to turn over all this stuff or  
24 not turn it over -- if I turn it over, it would only be to  
25 counsel the outside experts, not to the inside people.

1 MR. FRANK: Yeah. We're a long way from that. I  
2 believe we'll never get there.

3 THE COURT: Okay. You may be right.

4 MR. FRANK: I believe, and I repeat, that the  
5 expert -- that we should be given an opportunity to  
6 demonstrate that whatever it is that's said to be a trade  
7 secret isn't a trade secret at all, but is publicly  
8 available. And, I would be pleased to have your Honor have  
9 the assistance of an independent expert to judge that.  
10 Because, candidly, none of us -- your Honor, myself -- I  
11 couldn't tell you what's -- I could not look at this stuff  
12 and tell you what's in the public domain.

13 But, I want you to have expert assistance to  
14 determine, A, what's being -- whether stuff is being used  
15 and, B, if it's being used, if it's just stuff that people  
16 in this field know how to do or whether it's some secret in  
17 fact.

18 And, I would urge you to take expert -- whatever  
19 expert assistance you want on both those questions.

20 THE COURT: Okay.

21 Now, on the other questions, I did get supplemental  
22 -- why don't you all try and reach that guy from Great  
23 Britain in the next week or two, work down the list and  
24 confer.

25 Should I just have another status in case it all

# **Exhibit D**

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF MASSACHUSETTS  
3  
4 \_\_\_\_\_ )  
5 SCANSOFT, INC., )  
6 )  
7 Plaintiff, )  
8 )  
9 v. ) C.A. No. 04-10353-PBS  
10 )  
11 VOICE SIGNAL )  
12 TECHNOLOGIES, INC., )  
13 LAURENCE S. GILLICK, )  
14 ROBERT S. ROTH, ) HIGHLY CONFIDENTIAL  
15 JONATHAN P. YAMRON, )  
16 and MANFRED G. GRABHERR, )  
17 )  
18 Defendants. )  
19 \_\_\_\_\_ )

12  
13  
14  
15  
16  
17 DEPOSITION OF JEANNE McCANN, a witness called  
18 by and on behalf of the Defendants, taken pursuant to  
19 the applicable provisions of the Federal Rules of  
20 Civil Procedure, before Dana Welch, CSR, Registered  
21 Professional Reporter, and Notary Public, in and for  
22 the Commonwealth of Massachusetts, at the offices of  
23 Choate, Hall & Stewart, 53 State Street, Boston,  
24 Massachusetts, commencing at 9:03 a.m.

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:  2 For the Defendants:  3 CHOATE, HALL &amp; STEWART, P.C.  Exchange Place  4 53 State Street  Boston, Massachusetts 02109  5 (617) 248-5000  rfrank@choate.com  6 By: Robert S. Frank, Jr., Esq.  7 For the Plaintiff:  8 BROMBERG SUNSTEIN, LLP  125 Summer Street  9 Boston, Massachusetts 02110-1618  (617) 443-9292  10 lfleming@bromsun.com  By: Lisa Fleming, Esq.  11  12  13  14  15  16  17  18  19  20  21  22  23  24</p>	<p style="text-align: right;">Page 4</p> <p>1 WHEREUPON,  2 JEANNE McCANN,  3 having been duly identified, swore or affirmed  4 that her testimony would be the truth, the  5 whole truth, and nothing but the truth,  6 testified as follows:  7 DIRECT EXAMINATION  8 BY MR. FRANK:  9 Q. Good morning, Ms. McCann. Would you  10 state your name for the record, please.  11 A. Jeanne McCann.  12 Q. Where do you live, Ms. McCann?  13 A. Wellesley, Massachusetts.  14 Q. Street address, please?  15 A. 14 Chatham Circle, Wellesley,  16 Massachusetts.  17 Q. Are you presently employed?  18 A. Yes.  19 Q. By whom are you employed?  20 A. By ScanSoft, Inc.  21 Q. What is your present position for  22 ScanSoft?  23 A. My present position at ScanSoft is  24 senior vice-president research and development.</p>
<p style="text-align: right;">Page 3</p> <p>1 INDEX  2  3 WITNESS: JEANNE McCANN PAGE NO.  4 By Mr. Frank 4  5 Certificate of the Reporter 263  6  7  8 EXHIBITS  9 NO. DESCRIPTION PAGE NO.  10 1 - Affidavit of Jeanne McCann 13  11 2 - SS 020265 - 268 78  12 3 - SS 016318 - 323 115  13 4 - SS 020416 &amp; 17 131  14 5 - SS 020239 &amp; 40 143  15 6 - SS 016324 - 339 163  16 7 - SS 020639 - 44 171  17 8 - SS 020617 - 619 185  18 9 - 500 190  19 10 - SS 020589 194  20 11 - SS 020581 - 584 199  21 12 - SS 020566 - 569 214  22 13 - SS 020305 &amp; 06 228  23 14 - SS 020570 - 74 233  24 15 - SS 020169 &amp; 70 257</p>	<p style="text-align: right;">Page 5</p> <p>1 Q. Starting with college, what is your  2 educational background?  3 A. My bachelor's degree is from Simmons  4 College in Boston, Massachusetts, with  5 specialties in math, physics and education. I  6 have an M.B.A. from Babson College with  7 specialty in finance and computer systems.  8 Q. When did you graduate from Simmons?  9 A. In 1972.  10 Q. And from Babson?  11 A. 1976.  12 Q. I'm just going to ask you some  13 questions that are designed to elicit your  14 employment history since Babson. What did you  15 do after you obtained your degree from Babson?  16 A. I went to Babson while I was working.  17 So my first employment --  18 Q. So let me stop you there and ask you  19 where you were working at the time?  20 A. In 1972, after I had graduated from  21 Simmons, I went to work for Liberty Mutual  22 Insurance Company in their systems development  23 group, their internal software development  24 group. I worked at Liberty Mutual in Boston,</p>

2 (Pages 2 to 5)

<p style="text-align: right;">Page 50</p> <p>1 THE DEPONENT: I'm not sure.</p> <p>2 BY MR. FRANK:</p> <p>3 Q. Okay. Now, when you prepared this</p> <p>4 affidavit, Exhibit 1, were you aware of any</p> <p>5 particular trade secret of L&amp;H or Dragon that</p> <p>6 was being used or had been used by Mr. Gillick?</p> <p>7 MS. FLEMING: Objection.</p> <p>8 THE DEPONENT: No.</p> <p>9 BY MR. FRANK:</p> <p>10 Q. How about Mr. Robert Roth?</p> <p>11 A. No.</p> <p>12 Q. How about Mr. Yamron?</p> <p>13 A. No.</p> <p>14 Q. Have you since learned anything that</p> <p>15 has caused you to believe that a particular</p> <p>16 Dragon or L&amp;H trade secret has been or is being</p> <p>17 used by Mr. Gillick?</p> <p>18 MS. FLEMING: Objection.</p> <p>19 THE DEPONENT: The information that we</p> <p>20 have about Voice Signal products is from</p> <p>21 their press releases and other public</p> <p>22 sources.</p> <p>23 BY MR. FRANK:</p> <p>24 Q. I would ask the reporter to read you my</p>	<p style="text-align: right;">Page 52</p> <p>1 BY MR. FRANK:</p> <p>2 Q. Fair enough. The -- did ScanSoft --</p> <p>3 withdrawn. Did Dragon from time to time</p> <p>4 publish the work that it did?</p> <p>5 MS. FLEMING: Objection.</p> <p>6 THE DEPONENT: Yes. The Dragon</p> <p>7 research team from time to time would</p> <p>8 publish papers about work that they did.</p> <p>9 BY MR. FRANK:</p> <p>10 Q. And was there a policy or other writing</p> <p>11 at Dragon that described what should and what</p> <p>12 shouldn't be published?</p> <p>13 A. There may have been. I'm not aware of</p> <p>14 it.</p> <p>15 Q. Okay. Was there some principle that</p> <p>16 was applied with respect to what should or</p> <p>17 shouldn't be published?</p> <p>18 MS. FLEMING: Objection.</p> <p>19 THE DEPONENT: There may have been. I</p> <p>20 would not have been aware of it. The</p> <p>21 research group would have been aware of</p> <p>22 that.</p> <p>23 BY MR. FRANK:</p> <p>24 Q. In paragraph 32 of your affidavit, you</p>
<p style="text-align: right;">Page 51</p> <p>1 question again and I'll ask you to answer my</p> <p>2 question.</p> <p>3 A. Okay.</p> <p>4 THE COURT REPORTER: "Question: 'Have</p> <p>5 you since learned anything that has caused</p> <p>6 you to believe that a particular Dragon or</p> <p>7 L&amp;H trade secret has been or is being used</p> <p>8 by Mr. Gillick?'"</p> <p>9 MS. FLEMING: Objection.</p> <p>10 THE DEPONENT: No.</p> <p>11 BY MR. FRANK:</p> <p>12 Q. Same question for Mr. Robert Roth.</p> <p>13 MS. FLEMING: Objection.</p> <p>14 THE DEPONENT: No.</p> <p>15 BY MR. FRANK:</p> <p>16 Q. Same question for Mr. Jon Yamron.</p> <p>17 MS. FLEMING: Objection.</p> <p>18 THE DEPONENT: No.</p> <p>19 BY MR. FRANK:</p> <p>20 Q. Same question for Mr. Manfred Grabherr.</p> <p>21 MS. FLEMING: Objection.</p> <p>22 THE DEPONENT: I don't believe I've</p> <p>23 ever made a statement about Manfred</p> <p>24 Grabherr.</p>	<p style="text-align: right;">Page 53</p> <p>1 refer to or you use the acronym ASR stands for</p> <p>2 Automated Speech Recognition?</p> <p>3 A. That's correct.</p> <p>4 Q. Okay. And elsewhere in your affidavit</p> <p>5 you use the expression "ASR algorithms." What</p> <p>6 is an ASR algorithm?</p> <p>7 A. An ASR algorithm would be a formula</p> <p>8 used to build up a program that would be able</p> <p>9 to take in speech in wave forms, digitize it</p> <p>10 and recognize it.</p> <p>11 Q. I take it that's a very general term?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And fair to say that some ASR</p> <p>14 algorithms are in the public domain and others</p> <p>15 are not?</p> <p>16 MS. FLEMING: Objection.</p> <p>17 THE DEPONENT: Yes.</p> <p>18 BY MR. FRANK:</p> <p>19 Q. Some were used by Dragon and some were</p> <p>20 not?</p> <p>21 MS. FLEMING: Objection.</p> <p>22 THE DEPONENT: I'm not sure I</p> <p>23 understand that last question.</p> <p>24 BY MR. FRANK:</p>

14 (Pages 50 to 53)